

II. Regulatory Update



NJDEP continued its efforts in 1999 to promulgate the state's first soil cleanup standards with plans to release a draft proposal by fall 2000. In addition, the Department adopted several important rules to implement legislative amendments that included the Brownfield and Contaminated Site Remediation Act, and began new rulemaking efforts for its remedial priority scoring and underground storage tank programs.

The Site Remediation Program is leading the Department's rulemaking effort to promulgate soil remediation standards that will be proposed at N.J.A.C. 7:26D. The Site Remediation Program is working closely with other Department programs in the development of the rule. The Department is considering human health-based soil remediation standards that will be used to identify and remediate contaminated sites in New Jersey.

Also under consideration are soil standards that are appropriate for residential and nonresidential use, as well as procedures for the development of site specific standards and impact to ground water standards. The Site Remediation Program plans to solicit public input concerning this rulemaking through an interested party review in fall 2000.

The process includes looking at procedures used by USEPA to develop cleanup levels providing appropriate protection to human health. New Jersey still employs a conservative public health risk standard that is very protective. It requires that contamination be addressed if person's exposure to a hazardous substance results in a cancer risk exceeding one in a million and a non-cancer risk exceeding a hazard quotient of one.

Current discussions about the cleanup standards include considering ingestion,

inhalation and dermal exposure pathways as well as surface water and ground water impacts. Analytical detection limits and natural background levels also will be considered in the development of the soil remediation standards. The Department's Technical Requirements for Site Remediation rule may also need to be amended if the cleanup standards are promulgated based on anticipated changes to sampling requirements to meet new protocols.

As guided by existing statute, the Department will continue to approve on a site specific basis remedial measures that incorporate engineering and institutional controls allowing contamination to be left in place at certain levels if such controls prevent exposure to the public and are maintained properly.

In other regulatory action during 1999, the Site Remediation Program adopted rule changes implementing legislative amendments to the renamed Brownfield and Contaminated Site Remediation Act (formerly the Hazardous Site Discharge Remediation Act), N.J.S.A. 58:10B-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, and the Industrial Site Recovery Act, N.J.S.A. 13:1K-6. The legislative amendments and rule changes provide incentives to facilitate the acquisition and remediation of contaminated sites in New Jersey, especially those areas formerly used for commercial and industrial purposes known as brownfield sites. On July 2, 1999, the Site Remediation Program adopted amendments to four of its rules: the Industrial Site Recovery Act rule (ISRA rule), N.J.A.C. 7:26B; the Department Oversight of the Remediation of Contaminated Sites rule (oversight rule), N.J.A.C. 7:26C; the Technical Requirements for Site Remediation rule (technical rule), N.J.A.C.

7:26E; and, the Underground Storage Tanks rule (UST rule), N.J.A.C. 7:14B.

On February 19, 1999, the Site Remediation Program readopted with amendments the Processing of Damage Claims Pursuant to the Sanitary Landfill Closure and Contingency Fund Act rule (SLF rule), N.J.A.C. 7:11. In this same rulemaking, the Site Remediation Program adopted amendments to the Processing of Damage Claims Pursuant to the Spill Compensation and Control Act rule (Spill Fund rule), N.J.A.C. 7:1J.

The SLF rule provides the requirements for processing claims made to the Sanitary Landfill Facility Closure and Contingency Fund (SLF Fund). The SLF Fund was established in 1981. The purpose of the SLF Fund is to provide compensation for damages proximately resulting from the improper operation or improper closure of sanitary landfill facilities.

The February 19, 1999 adoption also included amendments to the SLF rule and the Spill Fund rule (which provides the requirements for processing claims made to the Spill Compensation and Control Act Fund) based on amendments to the Spill Compensation and Control Act, N.J.S.A. 58:10B-23.11a et seq., and the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B et seq. The adopted amendments to the SLF rule and the Spill Fund rule provide that certain parties may be barred from making a claim against the SLF Fund and/or the Spill Fund depending on whether the claimant is the beneficiary of a covenant not to sue issued by the Department and the type of remedial action implemented at the subject property.

The Department has several rulemaking initiatives underway for the year 2000.

In March 2000, the Site Remediation Program proposed a readoption with amendments to the Remedial Priority System rule (RPS rule), N.J.A.C. 7:26F. The RPS rule, promulgated in 1996, establishes a system to evaluate the relative risks associated with known contaminated sites in New Jersey. The system characterizes those risks as numerical scores that can be organized in ranked order. By defining the relative risk posed by these sites, the Department shall be better able to determine its priorities for remediation using public funds.

Based on the program's experience in implementing the existing RPS rule, the Department is proposing technical changes to the scoring system. The emphasis of the amendments is to provide a better mechanism to evaluate the limited analytical data available on some of the sites awaiting ranking.

In summer 2000, the Department is planning to propose a new Financial Responsibility rule, N.J.A.C. 7:14B-15 and 16. The proposed rule will establish the requirements for owners and operators of state regulated underground storage tanks to maintain evidence of financial responsibility for necessary remedial actions in the event of a discharge from an underground storage tank, as well as for compensating third parties for damage caused by the discharge. The rule will require owners and operators of underground storage tanks who do not establish and maintain financial responsibility to pay an annual surcharge to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The purpose of this fund is to make low interest loans and grants to eligible owners and operators of regulated petroleum underground storage tanks

for the purpose of financing costs associated with the upgrade and closure of underground storage tanks as well as the remediation of discharges from those tanks. The fund also will provide loans and grants to eligible homeowners for remedial activities necessary due to a discharge from their home heating oil underground storage tanks.